Chicago and Northeast Illinois District Council of Carpenters; United Brotherhood of Carpenters and Joiners of America Local Union No. 13; United Brotherhood of Carpenters and Joiners of America, Local Union No. 1185[1] *and* Millenium Construction and Laborers' International Union of North America, Local Union No. 6, AFL–CIO. Cases 13–CD–597 and 13–CD–601

November 9, 2001

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

The charges in this Section 10(k) proceeding were filed December 28, 2000,[2] and January 12, 2001.[3] In Case 13–CD–597, Laborers' International Union of North America, Local Union No. 6, AFL–CIO (the Laborers) alleges that the United Brotherhood of Carpenters and Joiners of America, Local Union No. 13 (Local 13) violated Section 8(b)(4)(D) of the National Labor Relations Act (the Act) by engaging in proscribed activity with an object of forcing the Employer, Millenium Construction, to assign certain work to employees it represents rather than to employees represented by the Laborers. In Case 13–CD–601, the Employer alleges that Local 13, the United Brotherhood of Carpenters and Joiners of America, Local Union No. 1185 (Local 1185), and the Chicago and Northeast Illinois District Council of Carpenters (District Council)[4] violated Section 8(b)(4)(D) of the Act by engaging, and continuing to engage, in the proscribed activity charged in Case 13–CD–597 with an object of forcing the Employer to assign certain work to employees they represent rather than to employees represented by the Laborers. The hearing was held on March 5, 19, and 20, 2001, before Hearing Officer Ethan N. Ray.

[1] Laborers' filed a Motion to Amend Caption, stating that the caption should be amended to reflect that, on March 29, 2001, the Respondent' parent organization disaffiliated from the AFL–CIO. The motion is not opposed. The motion is granted, and the caption has been amended accordingly.

[2] Case 13–CD–597.

[3] Case 13–CD–601.

[4] Because Local 13, Local 1185, and the District Council have filed a consolidated post-hearing brief, they are subsequently referred to collectively as the Carpenters.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that the Employer is an Illinois corporation engaged in the business of general construction and that, during the calendar year preceding the hearing, the Employer received goods and materials valued in excess of $50,000 at its facility located in Chicago, Illinois, directly from points located outside the State of Illinois. Accordingly, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. In addition, the parties stipulated that Local 13, Local 1185, the District Council, and the Laborers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer is engaged in general construction, which includes the framing and installation of doors, cabinets, drywall, baseboards, wood trim, countertops, hardwood floors, sub-flooring, and tile. The Employer's employees also perform clean up work, flagging, scaffold erection, and welding. In addition, they unload materials from trucks that arrive at the jobsite. The work in dispute was performed at two jobsites located at 841 West Monroe Street and 910 West Madison Street in Chicago.

In June 2000, the Laborers entered into a collective-bargaining agreement with the Employer to represent all of the Employer's employees. The agreement states that it applies to "all the work traditionally performed by members" of the Laborers. The agreement was entered into on behalf of the parties by the Employer's president, Domiko Evtimov, and the Laborers' president, Jeff Ziemann.

Thereafter, District Council Business Representative Mike Sexton and Local 13 Business Representative Tom Ryan visited the Employer's jobsite located at 841 West Monroe Street.[5] Sexton asked Evtimov if the Employer was "ready to sign" a collective-bargaining agreement and told Evtimov "that's Carpenters' work." Evtimov explained to Sexton that the Laborers represented the Employer's employees. Sexton replied, "we'll see" and left the worksite. Ryan did not testify at the hearing.

[5] Evtimov and Sexton differed as to the date that this meeting occurred. Evtimov testified that the meeting took place within 10 days after the collective-bargaining agreement was signed with the Laborers, while Sexton testified that it occurred in mid-September.

Several months afterward, District Council Business Representative Keith Jutkins[6] spoke with Evtimov about various contractors working at the jobsite. Jutkins inquired as to who was performing the carpentry work and installing the hardwood floors. After being informed that the employees represented by the Laborers were doing this work, Jutkins told Evtimov that "you['ve] got to sign with our local, Carpenters local" and that "whoever do[es] hardwood floors in Chicago has to sign with me[.]" Local 1185 specializes in the installation of hardwood flooring and subflooring.

On December 27, 2000, Sexton and Ryan met again with Evtimov at the West Monroe Street jobsite where work was continuing. After touring the work site uninvited, Sexton asked Evtimov to confirm that Laborers-represented employees were doing door, trim, hardwood floors, and cabinetry work. After Evtimov so confirmed, Sexton commented: "that's [a] Carpenters' job, you cannot do that"; "you have to sign with the Carpenters"; and "[t]hat's not [a] Laborers' job." Sexton also asked to speak with the Employer's employees. Approximately six employees met with Sexton, revealed the level of wages and benefits being paid by the Employer, and showed him their union cards.

On December 28, 2000, Evtimov arrived at work to find that a picket line had been erected around the West Monroe Street jobsite. Picketing also occurred the following day at the Employer's West Madison Street jobsite. The picketers, who numbered as many as four at times, carried signs stating: "Employees of Millenium Construction receive substandard wages and benefits" and "Carpenters Local 13." Sexton met approximately once a week with picketers and, in his testimony, identified them as "my regular pickets."

In January 2001, the District Council received a letter from the Employer, dated January 8, 2001, stating that the Employer had begun paying area standard wages for the work in question. In response, a letter from the District Council, dated January 10, 2001, was sent to the Employer requesting verification that the Employer was paying area standard wages. No further communications ensued between the parties, and picketing continued until February 12, 2001.

B. Work in Dispute

As stated in the notice of hearing, the work in dispute is "[t]he installation of dry wall, cabinetry, wood trim and baseboards, doors, countertops and appliances, hardwood floors and sub-flooring, framing work, and general clean-up work performed by Millenium Construction at its jobsites located at 841 W. Monroe Street and 910 W. Madison Street in Chicago, Illinois."

C. Contentions of the Parties

The Carpenters contend that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated, arguing that their picketing activities had the object of preserving area standard wages and benefits for workers performing similar work in the Chicago area. The Carpenters also argue that the Laborers have disclaimed the work in dispute. Assuming arguendo that the Board determines that jurisdictional prerequisites are established, the Carpenters argue that the work in dispute should be awarded to the employees they represent based on the factors of area and industry practice, the skills and training required to safely perform the work, and economy and efficiency of operations.

The Employer and the Laborers contend that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, arguing that the Carpenters claimed the work, and that the Carpenters' picketing had an object of forcing the Employer to assign the disputed work to employees represented by the Carpenters rather than to employees represented by the Laborers. In addition, the Employer and the Laborers argue that the disputed work should be awarded to employees represented by the Laborers based on the Employer's preference, the collective-bargaining agreement between the Employer and the Laborers covering the disputed work, employee skills required to perform the work, and economy and efficiency of operations.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be established that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated. This requires a finding that there are competing claims to disputed work between rival groups of employees and that there is reasonable cause to believe that a party has used proscribed means to enforce its claim. The Board also must find that no method for voluntary adjustment of the dispute has been agreed upon.

The parties stipulated that there is no agreed upon method for a voluntary adjustment of the dispute.

The Board has long held that performance of work by a group of employees is evidence of a claim to that work by those employees, even absent an explicit claim. *Operating Engineers Local 926 (Georgia World Congress Center)*, 254 NLRB 994, 996 (1981). Here, the record clearly demonstrates that the employees represented by the Laborers have been performing the work at the Em-

[6] Jutkins was also identified by Martin Umlauf, a District Council business representative, as either a business representative or a business manager of Local 1185.

ployer's worksites. Accordingly, we conclude that Laborers-represented employees claim the disputed work.[7] Id.

The record shows that the Carpenters also claimed the work performed by the Employer's employees at the two jobsites in question. As previously discussed, Sexton and Ryan met with Evtimov on two occasions.[8] At the first meeting, Sexton asked Evtimov if the Employer was "ready to sign" a collective-bargaining agreement and told Evtimov that the work being done at the West Monroe Street and West Madison Street work sites was "Carpenters' work." During the second meeting, Sexton, after inquiring as to who was doing the door, trim, hardwood floors, and cabinetry work, said to Evtimov that "that's [a] Carpenters' job" and "you have to sign with the Carpenters." Similarly, Jutkins told Evtimov that "whoever do[es] hardwood floors in Chicago has to sign with me" and that "you['ve] got to sign with our local, Carpenters local".[9] Under these circumstances, we find that there is reasonable cause to believe that the Carpenters claimed the disputed work. *Electrical Workers IBEW Local 9 (Omni Electric)*, 308 NLRB 513, 514 (1992).

We now turn to the issue of whether there is reasonable cause to believe that a party has used proscribed means to enforce its claim for the disputed work. Although the message on the picket signs was couched in area standards language, the evidence at the hearing indicated that an object of the picketing was to obtain the assignment of the disputed work. Thus, the record shows that the picketing commenced just one day after Sexton visited the West Monroe Street jobsite and told Evtimov that the work being performed was Carpenters' work, not Laborers' work. Under the circumstances, we find that reasonable cause exists to believe that *an* object of the picketing was to force or require the Employer to reassign the disputed work from employees represented by Laborers to employees represented by Carpenters. Because "[o]ne proscribed object is sufficient to bring a union's conduct within the ambit of Section 8(b)(4)(D)," *Plumbers Local 305 (Abington Constructors),* 307 NLRB 1048, 1049 (1992), we find reasonable cause to believe that a violation of the statute has occurred.[10]

Accordingly, for these reasons, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting),* 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction),* 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

The parties stipulated that neither the Laborers nor the Carpenters have been certified to represent any of the Employer's employees.

The Carpenters presented no evidence that it has a collective-bargaining agreement with the Employer.

The Employer presented evidence that it has a collective-bargaining agreement with the Laborers. This agreement states that "[e]mployees covered by this Working Agreement shall retain all the work traditionally performed by members of the UNION." This provision does not assign the disputed work to employees represented by the Laborers and, therefore, does not favor the Laborers-represented employees. *Teamsters Local 470 (Philco-Ford Corp.)*, 205 NLRB 552, 594 (1973).

Accordingly, we find that the factors of certifications and collective-bargaining agreements do not favor awarding the disputed work to either group of employees.

[7] We reject the Carpenters' argument that the Laborers disclaimed an interest in the disputed work. To be effective, a disclaimer must be "clear, unequivocal, and unqualified." *Operating Engineers Local 77 (C. J. Coakley Co.)*, 257 NLRB 436, 438 (1981). Here, Ziemann testified initially on cross-examination that the disputed work was not being claimed by the Laborers, but then on redirect he testified that the Laborers claimed the disputed work. Thus, we find that the purported disclaimer was not unequivocal.

[8] As stated above, Sexton was a District Council business representative, and Ryan, who accompanied him, was a Local 13 Business Representative. We conclude that there is reasonable cause to believe that Sexton and Ryan were demanding the disputed work on behalf of the District Council and Local 13.

[9] As stated above, Jutkins was a representative of both Local 1185 and the District Council. Thus, we conclude that there is reasonable cause to believe that Jutkins was demanding the disputed work on behalf of Local 1185 and the District Council.

[10] We also find reasonable cause to believe that Local 13, the District Council, and Local 1185 were responsible for the picketing. Thus, the record shows that the picketers carried signs reading "Carpenters Local 13." District Council Representative Sexton regularly visited the picket lines, and, in his testimony, he referred to the picketers as "my regular pickets." Finally, with respect to Local 1185, we observe that the disputed work includes the installation of hardwood floors and that Local 1185-represented employees specialize in performing that work. Given that District Council Representative Jutkins previously had claimed the hardwood floor work on behalf of employees represented by Local 1185, we infer that the District Council was also picketing on their behalf.

2. Employer preference and current work assignment

The Employer assigned the disputed work to employees represented by the Laborers and prefers that the work in dispute continue to be performed by Laborers-represented employees. Accordingly, these factors favor awarding the disputed work to the employees represented by the Laborers.

3. Area and industry practice

The Carpenters presented evidence that Carpenters-represented employees traditionally perform the disputed work in the Chicago area. Joseph Feldner, president of the Chicago-based McNulty Brothers Company, which has collective-bargaining agreements with both the Carpenters and the Laborers, testified that his Carpenters-represented employees routinely perform the disputed work. Laborers' President Ziemann acknowledged in his testimony that Carpenters-represented employees traditionally perform the disputed work. Accordingly, we find that the factor of area practice favors awarding the work in dispute to employees represented by the Carpenters.

However, no evidence was presented regarding the practices of similarly situated employers outside of the Chicago area. Accordingly, the factor of industry practice does not favor awarding the disputed work to employees represented by either the Laborers or the Carpenters.

4. Relative skills and training

The evidence presented at the hearing demonstrates that the Employer's employees, represented by the Laborers, possess the required skills and training to perform the disputed work. These employees have been trained on-the-job by Evtimov, who indicated complete satisfaction with the Laborers' skills and work quality.

The Carpenters presented evidence that Carpenters-represented employees, largely due to the Carpenters' apprenticeship and training program, are highly skilled and trained to perform the disputed work. The evidence presented at the hearing also demonstrates, however, that not every Carpenters-represented employee is trained through the apprenticeship and training program. Many employees represented by the Carpenters, like the Employer's employees, acquire their skills and training through experience gained on-the-job.

Accordingly, we find that the factors of skills and training do not favor awarding the disputed work to either group of employees.

5. Economy and efficiency of operations

The record demonstrates that assigning the disputed work to employees represented by the Laborers would be more economical and efficient because they perform related work tasks in addition to the disputed work. These additional tasks include raising scaffolding, unloading trucks, clean up, flagging and welding. By contrast, if the disputed work were assigned to Carpenters-represented employees, the Employer would have to pay them to remain idle while they waited for scaffolding to be erected or materials to be brought to them by others because they do not perform such tasks.

Accordingly, we find that this factor favors awarding the disputed work to the Employer's employees represented by the Laborers.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the Laborers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference, current work assignment, and the economy and efficiency of operations. We find that these factors outweigh the factor of area practice, which favors an award to Carpenters-represented employees. In making this determination, we are awarding the work to employees represented by the Laborers, not to that Union or its members.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Millenium Construction, represented by Laborers' International Union of North America, Local Union No. 6, are entitled to perform the installation of dry wall, cabinetry, wood trim and baseboards, doors, countertops and appliances, hardwood floors and subflooring, framing work, and general clean-up work performed by Millenium Construction at its jobsites located at 841 W. Monroe Street and 910 W. Madison Street in Chicago, Illinois.

2. The Chicago and Northeast Illinois District Council of Carpenters; United Brotherhood of Carpenters and Joiners of America, Local Union No. 13; and United Brotherhood of Carpenters and Joiners of America, Local Union No. 1185 are not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Millenium Construction to assign the disputed work to employees represented by them.

3. Within 14 days from this date, the Chicago and Northeast Illinois District Council of Carpenters; United Brotherhood of Carpenters and Joiners of America, Local Union No. 13; and United Brotherhood of Carpenters and Joiners of America, Local Union No. 1185 shall notify the Regional Director for Region 13 in writing whether they will refrain from forcing Millenium Construction, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. November 9, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD